This Recommended Order and Decision was followed by an Order and Decision in the 4th Quarter of 2004.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:		
DONNA FELECCIA,		
Complainant,		
and	CHARGE NO:	1999SF0713
	EEOC NO:	21B992240
SANGAMON COUNTY SHERIFF'S DEPARTMENT,	ALS NO:	S-11330
Respondent.		

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101et seq.). A public hearing was held before me on January 9, 2003 in Springfield, Illinois. The parties have filed their post-hearing briefs. Accordingly, this matter is ripe for a decision.

Contentions of the Parties

In her Complaint, Complainant asserts that she was a victim of sexual harassment when a sergeant in Respondent's police force kissed her, delivered a coffee cup with candy, asked her if she wanted to have sex, and sent her a fictitious letter indicating that she may have been exposed to a communicable or sexually transmitted disease. Complainant similarly submits that the sergeant's sending of the fictitious letter constituted actionable retaliation since the letter was drafted in response to Complainant's prior rejection of his request to have sex. Respondent, however, maintains that the sergeant's conduct was insufficient to constitute sexual harassment. Alternatively, Respondent submits that even if the sergeant's conduct was sufficient to constitute actionable sexual harassment, it is not liable for his conduct since: (1) the sergeant, who was not Complainant's supervisor and otherwise had no control over the terms or conditions of her work, was essentially a co-worker of Complainant; and (2) it promptly

remedied Complainant's complaint of harassment once it had become aware of the sergeant's conduct. Respondent also maintains that Complainant failed to establish a *prima facie* case of retaliation.

Findings of Fact

Based upon the record in this matter, I make the following findings of fact:

1. On June 2, 1992, Complainant, Donna Feleccia, began work in Respondent's records department as a civilian employee.

2. By January 1, 1998, Complainant was working in the record's department, entering warrants and orders of protection into the records system. At the time, Complainant worked the first shift from 9:00 a.m. to 5:30 p.m. and was supervised by Lieutenant Sandra Hinsey, a "merit deputy" in Respondent's police department.

3. By January 1, 1998, Ron Yanor was a patrol division sergeant working on the second shift from 2:30 p.m. to 11:30 p.m. in a different area of the building than Complainant. In this capacity, Yanor, who was also a "merit deputy", assisted Lieutenant Stone in responding to crime reports or requests for assistance from the public and assigning various merit deputies to take care of such calls. Yanor also supervised members of the TACT team, which functioned as Respondent's SWAT team called upon to do special duties.

4. At all times pertinent to this case, Yanor held no supervisory duties over Complainant, although he possessed some supervisory duties over the merit deputies in the patrol division. As such, only Lieutenant Hinsey had authority to make decisions regarding Complainant's duties and the nature of her working conditions, and Yanor had no role in giving Complainant orders as to how she should perform her work or in hiring, firing, demoting or disciplining any of the civilian employees in the records department.

5. In 1998 Complainant was undergoing a divorce which was finalized in November of 1998. At some point in November of 1988, Yanor invited Complainant to accompany him to a local bar. Complainant, who at the time was a "pretty good" friend of Yanor, accepted the

invitation because she believed that Yanor's wife would accompany them, and because she believed that other individuals who were with Yanor at the Sheriff's annual cigar party earlier in the evening would be at the bar.

6. Yanor arrived at Complainant's home later that night without his wife. Complainant nevertheless went to the bar where Complainant and Yanor met another individual who had gone to the cigar dinner. After staying a while in the bar, Complainant became uncomfortable when she realized that no one else from the Sheriff's department was at the bar. Complainant then asked Yanor for a ride home. When they arrived at Complainant's home, Yanor grabbed Complainant's arm and asked for a kiss. When Complainant refused and reminded Yanor that he was married, Yanor kept pleading for one kiss. Complainant initially refused the second request for a kiss on the basis that they were "just friends". However, Complainant eventually kissed Yanor after believing that he would not let go of her arm if she had refused. Complainant did not report this incident to Hinsey.

7. At some point in December of 1998, Yanor arrived at Complainant's home with a Christmas cup filed with candies. Complainant's children let Yanor inside Complainant's home, and Yanor presented Complainant with the cup. Yanor did not stay long during this visit and left once Complainant's ex-husband arrived at her home. Complainant did not report this incident to Hinsey.

8. At some point in December of 1998, Complainant went to a girlfriend's Christmas party that eventually wound up at the same local bar where Yanor had taken Complainant after the cigar party. While Complainant and her girlfriend were dancing, Yanor approached them and asked Complainant if she would like to dance. Complainant refused this request and left the bar shortly thereafter. Complainant did not report this incident to Hinsey.

9. At some point in time in December of 1998, Yanor approached Complainant at work and asked whether she would go to a motel with him for the night. Complainant, in

refusing Yanor's request, reminded Yanor that he was married and observed that she would always be just a friend to him. Complainant did not report this incident to Hinsey.

10. On February 5, 1999, Complainant found a letter on her desk at work, which read in pertinent part:

"Dear Ms. Feleccia:

This is to inform you that you may have recently been exposed to a communicable or sexually transmitted disease. A confidential source who has tested positive has brought this matter to our attention.

To insure privacy, your file has been assigned a control number of #A23759. Please refer to this in future correspondence.

It is important that you schedule a screening within the next 7 days. Please contact your local public health office for an appointment. This service is provided at no cost to you.

Yours truly,
/s/
Julie A. Chelani, MSW
Patient Advocate"

11. After Complainant read the letter, which was on official looking stationary from the Department of Public Health, she took the letter to Hinsey. Hinsey, in noticing how visibly shaken Complainant was about the letter, took Complainant to Hinsey's car where, after discussing the matter further, Complainant agreed to take the letter that day to the Department of Public Health to see if it was genuine.

12. After learning at the Department of Public Health that the letter was not genuine, Hinsey and Complainant speculated as to the author of the letter. Complainant initially mentioned as possibilities a former employee in Respondent's 911 department or Complainant's ex-husband. However, both names were dismissed as potential suspects since neither individual had current access to the Sheriff's department to leave the letter. Hinsey then suggested the possibility of Yanor and another deputy whom she had seen joking with Complainant in the past. Complainant initially responded that she did not think that either of them would have done it.

13. When Hinsey and Complainant returned to work, they spoke to Chief Sacco about the letter. During this conversation, Chief Sacco indicated that he would be sending the

letter to the State Police to ascertain the identity the author of the letter. During the process, fingerprint cards were gathered from all of the individuals whom Complainant and Hinsey discussed as possible suspects. Hinsey also sent a ribbon from one of the office's typewriters to the State Police because she believed that the typeset of the typewriter and the letter seemed similar.

14. After Complainant's meeting with Sacco, Hinsey told Complainant to resume her duties and attempt to act normal. Complainant followed these instructions and continued in her duties without incident throughout the balance of the day. During this time no one came to her to inquire about the letter.

15. On March 31, 1999, the State Police prepared a report indicating that Yanor's fingerprints were on the letter and that the letter appeared to have been typed on the typewriter ribbon tendered by Hinsey.

16. On April 22, 1999, Hinsey gave a statement to Respondent's management indicating that he had written the letter, but that he had intended the letter to be a joke. Thereafter, Yanor was advised to not have any contact with Complainant other than what was required under his job functions, and he was admonished by his union representative not to bother her or to have any contact with her. The Department of Public Health was also notified that a suspect was located, and that Respondent would assist any agency named by them to investigate the matter criminally.

17. On May 18, 1999, Yanor received a disciplinary memorandum in which the Sheriff wrote:

> "Based on the outcome of a Professional Standards internal investigation sustaining the fact you admitted to violating the Sheriff's Office Sexual Harassment Policy, I am hereby suspending you for four (4) days without pay to be served consecutively by June 11, 1999.
> I cannot express enough my disappointment in you, especially representing me and this office in your capacity as a supervisor. Your actions were reckless and showed lack of judgment.
> Any further actions of this magnitude will result in a substantially harsher suspension and possible demotion or termination…."

18. On May 25, 1999, Sergeant Meyer wrote Complainant a letter that informed her that the office had identified the party responsible for drafting the letter and had imposed an appropriate discipline. After she had read the letter Complainant and Hinsey went to Meyer and learned that Yanor was the individual who had written the offensive letter, and that Yanor had explained the letter as his attempt at a joke. Meyer also indicated that he could not reveal the precise discipline imposed on Yanor, and that she would have to go to the Sheriff for that information.

19. Shortly thereafter, Complainant and Hinsey spoke to the Sheriff who indicated that Yanor had received a four-day suspension, which was the maximum discipline allowed without informing the Merit Board about the incident. The Sheriff also indicated that the Department of Public Health would not be pressing any criminal charges, that she should not talk about the incident with the media or press any sexual harassment charges, and that she should not go near Yanor or talk to him. After leaving the Sheriff's Office, Complainant told Hinsey that she felt more punishment should have been imposed against Yanor.

20. On June 10, 1999, Complainant had a meeting with Sacco, during which Sacco indicated that there was nothing more that could be done with respect to Yanor's discipline.

21. On June 15, 1999, Complainant filed a Charge of Discrimination against Respondent and Yanor, alleging that she had been the victim of sexual harassment and that Yanor had retaliated against her for refusing his request for sexual relations. (On January 24, 2001, Complainant dismissed her claims against Yanor after reaching a settlement with him.)

22. From the date of Complainant's receipt of Yanor's letter until approximately June 15, 1999, Complainant continued to work regularly and did not complain to Hinsey of any difficulty with her work.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an "employer" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Under Section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D)) employers are strictly liable for sexual harassment committed by their managerial or supervisory staff regardless of whether the alleged harasser was the actual manager or supervisor of the victim of the harassment.

4. Complainant failed to establish a *prima facie* case of sexual harassment in that Complainant failed to show that the conduct at issue had the purpose or effect of substantially interfering with Complainant's work performance or created an intimidating, hostile or offensive working environment.

5. Complainant failed to establish a *prima facie* case of retaliation in that the record did not establish either an actual "protest" of sexual harassment or a causal link between any alleged complaint of harassment and any adverse act.

Determination

Respondent is entitled to a judgment on Complainant's sexual harassment claim since Complainant failed to show that the conduct of the supervisor rose to the level of actionable sexual harassment. It is also entitled to a judgment on Complainant's retaliation claim because Complainant failed to establish that she protested sexual harassment and failed to causally link any alleged complaint of harassment with any adverse act.

Discussion

Sexual Harassment

This case presents interesting questions as to: (1) whether an employer is strictly liable for sexual harassment of one of its supervisors when the supervisor does not directly supervise

the subordinate and where the supervisor has otherwise very little conduct with the subordinate in the workplace; and (2) whether the phrase "conduct of a sexual nature" as set forth in the sexual harassment provisions of section 2-102(D) of the Human Rights Act contemplates comments that do not pertain to requests for sex or sexual advances. While I agree with Complainant that an employer can be strictly liable for sexual harassment committed by any supervisor or manager, regardless of whether that individual actually supervises or manages the victim of the sexual harassment, I further find that Complainant ultimately loses on her sexual harassment claim since Yanor's conduct did not promote or create a sexual atmosphere at Complainant's workplace and did not otherwise substantially interfere with Complainant's work performance or create a hostile working environment.

To understand why Complainant loses on her sexual harassment claim, it is important to note the language of the Human Rights Act which defines sexual harassment as: "any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." (See 775 ILCS 5/2-102(D).) In **Harris v. Forklift Systems, Inc.**, 114 S. Ct. 367, 370 (1993), the United States Supreme Court, in examining the question as to whether a work environment has been rendered hostile or abusive, cited as significant factors the frequency of the discriminatory conduct, the severity of the conduct, the physically threatening or humiliating nature of the conduct and the interference of the conduct on the employee's work performance. The Commission has specifically relied upon the **Harris** standards when considering sexual harassment claims. See, **Davenport and Hennessey Forrestal Illinois, Inc.**, ___ Ill. HRC Rep. ___ (1987SF0429, March 30, 1998) and

Trayling v. Board of Fire and Police Commissioners, 273 Ill.App.3d 1, 652 N.E.2d 386, 394, 209 Ill.Dec. 846, 854) (2nd Dist. 1995).

Respondent, though, initially argues that regardless of whether Yanor's conduct could be classified as sexual harassment, it cannot be liable for the actions of Yanor since: (1) Yanor was not a member of Respondent's management staff and was not Complainant's supervisor; (2) because of Yanor's status, it can be liable for Yanor's conduct under section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D)) only if it was aware of Yanor's conduct and failed to take reasonable corrective measures; and (3) it took reasonable corrective measures once it became aware of Yanor's conduct after Complainant reported Yanor's February 1, 1999 letter to her supervisor. However, Complainant contends that any issue with respect to Respondent's lack of notice is irrelevant since: (1) the strict liability provisions of section 2-102(D) do not require that Yanor be Complainant's supervisor as long as he is "a" supervisor hired by Respondent; and (2) Complainant did not have to make a further protest about Yanor's conduct because Yanor's status as a supervisor provided Respondent with notice of his actions..

A review of Commission case law indicates that Complainant has the better argument. Specifically, in **Cunningham and Wal-Mart Stores, Inc.**, ___ Ill. HRC Rep. ___ (1992CF0496, April 16, 1998), the Commission addressed issues with respect to an employer's strict liability and the status of the alleged harasser and ultimately concluded that "there is no safe harbor" for an employer where managerial and supervisory employees commit sexual harassment since managerial and supervisory employees act on behalf of the employer. (**Cunningham**, slip op. at pg. 6.) True enough, the alleged harasser in Cunningham was the complainant's supervisor, but as our Complainant notes, the language of section 2-102(D) does not limit its definition of supervisory employees to those having direct supervision of the victim of harassment. Moreover, the Commission in **Cunningham** recognized that there is an identity of

interests between employers and their managerial/supervisory staff, such that an employer necessarily has notice of sexual harassment committed by its managerial/supervisory staff.

But placing a "supervisor" label on Yanor only gets Complainant half way to a finding of liability since section 2-101(E) still requires her to establish that Yanor's conduct had the "purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." This requirement, though, proves to be a stumbling block for Complainant since the record shows that Yanor lacked any power to hire, fire, demote, promote, transfer, discipline or give her orders, and Yanor otherwise was not responsible for the day-to-day functions of the employees in the records department where Complainant worked. (See, also **Ford and Caterpillar**, ___ Ill HRC Rep. ___ (1993SF0242, October 28, 1996), where the Commission also found, among other things, that the complainant failed to establish an alteration of his work environment by a supervisor accused of sexual harassment who had no authority over the complainant.) Indeed, Complainant's task is rendered more difficult by the fact that Yanor was not typically present in the records department and worked a different shift.

Of the instances of alleged harassment cited by Complainant, I initially note that the November, 1998 kiss, the December, 1998 coffee cup, the December 1998 chance encounter at a local bar, and the December, 1998 request to spend the night at a local motel are arguably outside the 180-day jurisdictional period for consideration as compensable acts by this Commission. This is so, since Complainant waited until June 15, 1999 to file her Charge of Discrimination, and Complainant never specified whether the December 1998 incidents occurred after December 16, 1998, when the relevant jurisdictional period began. (See, **Robinson v. The Human Rights Commission**, 201 Ill.App.3d 722, 559 N.E.2d 229, 147 Ill.Dec. 229 (1st Dist., 5th Div. 1990).) In any event, these incidents do not really advance Complainant's sexual harassment claim since: (1) at least up until Yanor's February, 1999 letter, she consistently told Yanor that she still wanted to be his friend even after she gave him

the November, 1998 kiss and refused his December, 1998 request to spend the night in a motel room; and (2) without Yanor's presence in the records department, Complainant failed to indicate how Yanor's conduct up until the February, 1999 letter altered her work environment. See also, **Baskerville v. Culligan**, 50 F.3d 428 (7th Cir. 1995), where the Seventh Circuit found that a series of sexually related "grunts" and comments by plaintiff's supervisor that included a reference to a hotel room did not constitute actionable sexual harassment.

Yanor's February, 1999 letter, though, presents a much closer question since Complainant and others testified that she was genuinely and understandably upset about the contents of what turned out to be an untrue letter informing her of the possibility that she had contracted a sexually communicable disease and urging her to get appropriate testing. However, because the letter was neither a request by Yanor for sexual favors nor an unwelcome sexual advance, the letter can be deemed an act of sexual harassment only if it qualifies as "conduct of a sexual nature". (775 ILCS 5/2-101(E).) In **Jenkins and R.G. Neal Associates, Inc., d/b/a Arby's, Inc.**, ___ Ill. HRC Rep. ___ (1994SF0818, April 28, 1995, Order on Request for Review), the Commission similarly considered the question as to whether a co-worker's insinuation that the complainant was a child molester constituted actionable sexual harassment. In emphasizing that a distinction must be made between non-actionable sexual comments and comments that qualify as "conduct of a sexual nature", the Commission ultimately concluded that while comments concerning child molestation were sexual in nature, they did not constitute "conduct of a sexual nature" because the comments did not create a sexual atmosphere at the workplace. **Jenkins** slip op. at p.2.

Here, Complainant similarly argues that the text of Yanor's letter constitutes "conduct of a sexual nature" since the letter discussed a sexual matter, i.e., a false linkage between Complainant and a sexually transmitted disease. While I agree with Complainant that the content of the letter touched upon sexual matters, I also agree with Respondent that Yanor's submission of the letter was not "conduct of a sexual nature" as defined by the Commission in

Jenkins. Specifically, a letter seemingly from a third party urging Complainant to undergo a test for a sexually transmitted disease does not come close to either a sexual advance or a request for sexual favors by Yanor, let alone create or promote a sexual atmosphere in Complainant's workplace. This is so, even when considering the fact that Yanor had previously requested Complainant to spend the night in a motel room.

Indeed, the circumstances of this case appear more akin to the gray area of "sexual teasing" that the Commission in **Ford and Caterpillar, Inc.**, ___ Ill. HRC Rep. ___ (1993SF0242, October 28, 1996) found to be sometimes hurtful and destructive, but ultimately not actionable. There, the complainant similarly alleged that he was sexually harassed by his supervisor who made three offensive comments about the complainant's sex life. According to our Complainant, the complainant in **Ford** should have prevailed because the Commission need only examine whether the comments touch upon any aspect of the complainant's sexuality in order to find that the conduct qualifies as "conduct of a sexual nature". However, the Commission in **Ford** rejected Complainant's approach when it concluded that although the supervisor's conduct touched upon sexual matters, it did not constitute actionable sexual harassment because the comments did not pertain to a sexual advance or a request for sexual favors. (**Ford**, slip op. at p. 8.) In short, Complainant loses here because she failed to show: (1) how Yanor's letter urging her to get tested for a communicable disease could be ever construed as either a sexual advance or a request for sexual favors by Yanor; or (2) how the letter promoted or created a sexual environment in her workplace.

Complainant's limited testimony regarding her contacts with Yanor in the workplace both before and after Yanor's letter only supports a finding that no actionable sexual harassment occurred here. For example, Complainant provides absolutely no testimony regarding what, if any contact, she had with Yanor after she received his letter and provides only brief testimony about two comments she heard from other deputies shortly after her receipt of Yanor's letter. Specifically, Complainant described one incident as a "joking" conversation

that she had with a deputy who talked about Complainant's alleged affair with Yanor as having "gone wrong". The other incident concerned a second-hand comment Complainant heard from a co-worker who wondered whether Complainant had "got a disease".[1] But that is it. Moreover, Hinsey testified without rebuttal that Complainant completed her work duties without incident on the day of the occurrence and performed her job duties without difficulty for months after receipt of Yanor's letter. Such evidence, however, does little to establish that Complainant operated in an "intimidating, hostile or offensive environment" as required by the Commission in order to establish a sexual harassment claim.

Remarkably, Complainant contends in her brief that it was a form of retaliation for the Sheriff to instruct her not to go near Yanor.[2] But, if Complainant were correct that Yanor's conduct created a hostile and intimidating environment based on sexual harassment, why would she ever object to an instruction to stay away from him? This is not to say, though, that Complainant was not genuinely disturbed about the receipt of Yanor's letter, or about the amount of punishment Yanor received as a result of his conduct. However, as the Commission's decision in **Ford** demonstrates, the Human Rights Act is not a general anti-harassment statute that precludes all forms of harassment however motivated. Thus, regardless of Complainant's mental anguish after learning that Yanor's conduct warranted only a four-day unpaid suspension, it is enough to say that Yanor's conduct did not amount to sexual harassment as that term has been interpreted by the Commission.

Finally, Complainant insists that liability must attach to Respondent since the Sheriff concluded in his disciplinary memorandum that Yanor was guilty of sexual harassment when he imposed a four-day suspension on Yanor arising out of the letter incident. However, a close reading of the memorandum indicates only that Yanor admitted to violating Respondent's

[1] Complainant also mentioned a comment she heard from her husband's ex-wife who wondered whether Complainant had contracted AIDS from another deputy. But that comment occurred more than a year after Complainant's receipt of Yanor's letter.
[2] Yanor was also instructed to stay away from Complainant.

sexual harassment policy, not that the Sheriff believed that Yanor had violated the sexual harassment provisions of the Human Rights Act. Moreover, because, as this case demonstrates, the term "sexual harassment" has different meanings to different individuals, I cannot say that the Sheriff's reference to the term "sexual harassment" evidences a concession of liability under the Human Rights Act. Indeed, because employers can impose higher standards of conduct than those mandated by the Human Rights Act, Respondent should not be penalized for merely attempting to discipline Yanor for unprofessional conduct that does not otherwise violate the Human Rights Act.

Retaliation

Under Commission precedent, a *prima facie* case of retaliation requires that the Complainant show that: (1) she engaged in a protected activity (i.e., either opposing practices forbidden under the Human Rights Act or participating in proceedings or investigations under the Act) that was known by the alleged retaliator; (2) Respondent subsequently took some "adverse action" against Complainant; and (3) the circumstances indicate a causal linkage between the protected activity and the adverse act. (See, for example, **Pace and State of Illinois, Department of Transportation**, ___ Ill. HRC Rep. ___ (1989SF0588, February 27, 1995).) As to Complainant's retaliation claim, the instant Complaint alleges that: (1) in December of 1998, Complainant "opposed" sexual harassment when she declined Yanor's invitation to go to a hotel with him for the evening; and (2) Respondent (through Yanor) "sexually harassed" Complainant in February of 1999 in retaliation for her opposition to sexual harassment when he sent her the February 1, 1999 letter falsely stating that Complainant had been exposed to a sexually communicable disease.[3] A review of the evidence, however, indicates that Complainant failed to establish a *prima facie* case of retaliation.

[3] Complainant also argues in her brief that the Sheriff's instructions not to go to the media, or press sexual harassment charges, or go near Yanor constituted unlawful retaliation. However, the closest Complainant came to mentioning these facts as a part of her retaliation claim in her Charge of Discrimination was her allegation that the Sheriff told her not to discuss Yanor's letter

Specifically, I doubt whether Complainant ever engaged in a protected activity as required under **Troyer and Northtown Ford, Inc.,** 14 HRC Rep. 392 (1984), when she declined Yanor's request to go with him to a motel room in December of 1998. In **Troyer**, the Commission considered the issue as to what a complainant must do to oppose a practice forbidden under the Human Rights Act. There, in finding that the complainant had failed to engage in activities opposing discrimination when she told the respondent that she believed its sick pay policy was "unfair", the Commission found that a complainant must make clear to her alleged retaliator that she is opposing a discriminatory practice either by calling it "discrimination", or some similar name, or by describing a situation in a way that indicates that the complainant believes that the situation is discriminatory. **Troyer**, 14 Ill. HRC Rep. at 412-13.

So what did Complainant do to register her opposition to sexual harassment in this case? According to Complainant, the protest was registered when she rejected Yanor's request to go to a motel to spend the night. A review of Complainant's testimony in this regard, though, indicates that she merely said "no" to Yanor's request and explained her refusal by the raising the fact that Yanor was married and indicating that she only wanted to be his friend. (Transcript at pg. 32.) This testimony, however, falls far short of what **Troyer** requires for satisfying the "protest" element of a retaliation claim since Complainant failed to link Yanor's request to any claim that he was committing either a discriminatory act or a violation of the Human Rights Act. In short, Complainant could have internally thought that Yanor's request was inappropriate, yet she failed to establish a *prima facie* case of retaliation since she clearly did not raise any discrimination issue when her response to Yanor was essentially "no thank you, but I still want to be your friend".

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with anyone. The Department of Human Rights, though, dismissed this portion of Complainant's Charge of Discrimination.

Additionally, I agree with Respondent that Complainant failed to causally link Yanor's letter with her refusal to go to a motel in December of 1998. Specifically, there is no reference to the December, 1998 refusal in Yanor's letter, and I note that Complainant, when initially pressed by Hinsey, actually disputed Hinsey's suggestion that Yanor could have been the author of the letter. Moreover, while the letter was drafted approximately one month after Complainant had turned down Yanor's request to spend the night in a motel, the record is silent as to what had transpired between Yanor and Complainant subsequent to Complainant's rejection of Yanor's request that might otherwise explain a linkage between the two events. Indeed, because Complainant indicated that she experienced some sort of platonic friendship with Yanor generally throughout her tenure at Respondent, Complainant can only speculate that the December, 1998 rejection of the offer to spend the night was the actual motivation for Yanor's letter.

Conclusion

For all of the above reasons, I recommend that the instant Complaint and Charge of Discrimination of Donna Feleccia on both her sexual harassment and retaliation claims be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE TH DAY OF SEPTEMBER, 2003